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ABSTRACT

Educating limited-English-proficient students (LEP) in the nation's public schools is an unmet educational need with national impact and a history of minimal compliance with Federal laws. The Lau v. Nichols decision of 1974 placed responsibility on school districts to ensure that LEP students were identified and provided with a language response program. It did not mandate bilingual education or the use of the native language, but did affirm governmental authority to require affirmative remedial efforts to give special attention to linguistically deprived children. While the first generation of national origin desegregation focused on the physical movement of students, and the second generation of such desegregation focused on equal access and treatment, the third generation of national origin desegregation focuses on physical resegregation, equal opportunities, and equal outcomes of education. Changes introduced through the Lau decision have resulted in minimal compliance with the law. It is imperative that the next generation of desegregation address equity issues for LEP students, with bilingual education recognized as a necessary response. (Contains 14 references.) (SLD)

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20 Years After Lau: In Pursuit of Equity Not Just a Language Response Program

Alicia Salinas Sosa, Ph.D.

Education is not a power conferred on the federal government in the U.S. Constitution. Because of this, policy analysts see the responsibility for education and authority over it as being delegated to the states by the Tenth Amendment to the Constitution. Thus, up until 45 years ago, the role of the federal government in education was limited.

In *Clarifying the Federal Role in Education*, Beebe and Evans point out that the federal government has a unique responsibility for assessing the condition and progress of educational achievement in the United States (1981). The government has a responsibility to improve education through initiatives in research, development and evaluation. The government must also preserve individuals' rights to equitable participation in the educational system. When this is non-existent, it must intervene to address critical educational problems which affect the entire country. According to Beebe and Evans, such problems having national impact are clearly beyond the scope and ability of states to address.

The education of limited-English-proficient (LEP) students enrolled in the nation's public schools constitutes an unmet educational need that has national impact. Several factors catapult this need to national proportions: (1) the number of LEP students is significant and growing, (2) LEP students have educational rights that are protected by federal laws and statutes, and (3) this group has traditionally not been well served by the educational system.

First Generation of National Origin Desegregation

Initially, the term desegregation focused on the physical movement of students which followed the 1954 *Brown vs. Board of Education* Supreme Court decision and on the prohibition of continuing stereotypes in the curriculum.

Prior to the *Brown* decision, Mexican American parents in California and Texas worked to secure the desegregation of public education. In the 1930s, '40s and '50s, Mexican American children who were enrolled in public schools in the United States attended physically segregated facilities.

Second Generation of National Origin Desegregation

The goal of desegregation during the second generation was to achieve equal access and treatment within schools and programs. Concerns centered on access to courses and programs as well as on the elimination of discriminatory practices. Soon, educators concerned with equity recognized that access was part of the solution. Desegregating schools would also have to target the elimination of physical resegregation, the provision of equitable opportunities to learn, and the achievement of comparable outcomes (Network of Regional Desegregation

Assistance Centers, 1989).

These same concepts apply to national origin desegregation. That is, in designing appropriate responses for LEP students, we should also be concerned with their having access to courses and programs (e.g., gifted and talented, mathematics and science) and their having equal opportunities to learn (high expectations, active participation), having access to the core content and reaching graduation requirements.

National origin desegregation has tended to occur in stages. Initial efforts targeted the most salient and gross inequalities. Prior to the *Lau v. Nichols* decision in 1974, a memorandum to school districts from the federal government had clarified the applicability of Title VI of the Civil Rights Act of 1964 to language minority students (DHEW, 1970). It identified three main areas of concern: (1) unequal access to participation in school programs because of language, (2) segregation by tracking, abiliy grouping and assignment to special education programs, and 3) exclusion of parents from school information. Furthermore, the May 25 memorandum instructed the Office for Civil Rights to implement the review and enforcement of compliance procedures.

The *Lau* decision placed responsibility on school districts to ensure that limited-English-proficient students were identified and provided with a language response program. The judge noted, "Under these state-imposed standards there is no equality of treatment merely by providing the same facilities, textbooks, teachers and curriculum for students who do not understand English effectively" (*Lau vs. Nichols*, 1974). The court found a denial of equal educational opportunity under the Civil Rights Act of 1964. Unfortunately, the 1974 *Lau* decision did not mandate bilingual education or use of the native language. However, the *Lau* decision did affirm the authority of the then Department of Health, Education and Welfare (DHEW) to "require affirmative remedial efforts to give special attention to linguistically deprived children."

Soon after, DHEW issued a memorandum known as the *Lau Remedies* and identified school districts having at least 5 percent limited-English-proficient students for investigation and review (1975). The *Lau Remedies* focused on instituting a language response program at the school district level. It provided direction regarding basic needs (program elements, entry/exit criteria, resources, staffing). School districts having higher concentrations of LEP students were targeted by the Office for Civil Rights (OCR) for review and plan development subsequent to a finding of non-compliance. Usually, the task for meeting the compliance review fell on the bilingual director. Despite this effort, it was estimated that only one-fourth of LEP students eligible for assistance were being served (CCSSO, 1990). The result was a programmatic response that targeted only one issue: the removal of language as a barrier to accessing the content.

Yet, other second generation problems existed which were not addressed at all. These included access and assignment of LEP students to "other" programs because of limited-English-proficiency (e.g., being denied entry into gifted and talented programs because of sole reliance on a standardized score), placement into special education classes where a 300 percent over-representation existed in classes for language and learning disabled students (Ortiz, 1986), and under-representation in advanced level math and science courses. Tracking

and ability grouping had been prohibited by the May 25 memorandum. Later, *Lau* affirmed the validity of the May 25 memorandum extending the Civil Rights Act of 1964 to language minority students. Despite the strong legal prohibitions of these actions, school districts in the nation continued to track, ability group and mis-place limited-English-proficient students in educational programs (Oakes, 1985).

Other second generation problems which were not addressed in *Lau* or in practice involved the elimination of practices which lead to isolation or differential treatment based on race, sex and national origin. This included not seeking solutions to end school segregation of LEP students. LEP students were often placed in one class together. In many cases, this resulted in virtually the same group of students spending their entire elementary school life together (García and Donato, 1990).

School district personnel, particularly school principals, did not act to diminish the disproportionate application of disciplinary procedures, including corporal punishment, suspensions and expulsions. While largely unacknowledged, the root to many discipline problems stemmed from lack of communication skills and cultural understanding on the part of school personnel interacting with culturally and linguistically different students (Sosa, 1993). Not much was said or written about the need for notices sent to parents regarding discipline to be in a language they understood. The issues of grading and grade retention because of language skills were, similarly, ignored.

As we entered into the third generation of desegregation, the problems encountered in the second generation of desegregation continued. In the 1990s, school districts began implementing zero tolerance and assigning students not upholding this policy to alternative high schools. Neither school district policy or staff development addressed the need for not disproportionately applying these disciplinary procedures to limited-English- proficient students.

Third Generation of National Origin Desegregation

In the third generation of desegregation, the focus was on physical resegregation, equal opportunities to learn and equal outcomes – achievements, attitudes and behaviors (Network of Regional Desegregation Assistance Centers, 1989). Desegregation concerns included having high teacher expectations, having challenging curriculum, having instruction that enhances opportunity to learn, validating students' culture and self-concept, and closing the achievement gap. The literature on effective schools and effective classrooms provided insights for practice describing effective schools as those where active leadership creates a climate in which "success is expected, academics are emphasized and the environment is orderly" (Squires, et al., 1984).

Teacher training followed the two major types of studies on effective teaching, one to identify the teaching processes used by effective teachers (correlational) and the second to train teachers on the effective behaviors in order to affect and improve student achievement (experimental). One very important finding from the correlational studies was the presage variables, those teacher beliefs that propelled them to act in the ways they did. The effective

teachers studied believed that students could learn and that they could teach students (Squires, et al., 1984). Because teachers believed students could learn, they tried different approaches until they successfully taught the content. The training that followed and the teacher evaluation instruments later developed left out these very important beliefs and other important actions like choosing the right level of difficulty of the objective and doing a task analysis since only low inference behaviors (those that could be measured) were included in the training and the evaluation instruments.

A second set of important findings from this research pointed out that students in the effective teachers' classrooms were on-task a large portion of the school day, covered the content, and experienced success at a very high level (95%) (Squires, et al., 1984). For LEP students, it is not enough to ensure that they are receiving native language instruction or comprehensible instruction through ESL. A step further is to see that the they remain on-task, cover the content and experience high rates of success in mastering the objective. By specifying these outcomes as aims, school personnel can better assess innovations and their promise for academic achievement of LEP students. Thus, higher order thinking skills (H.O.T.S.), cooperative learning, whole language and interactive teaching can be embraced not because they are the latest fads in education, but because they further open the curriculum to LEP students by increasing higher order thinking (focus), active participation in the small groups (think-share pairs, triads), access to meaning (whole language) and connectedness/repetition (thematic units). These strategies hold particular promise for increasing LEP students' access to quality learning experiences by providing access to the content area material, developing concepts and increasing vocabulary.

These teaching strategies should be used, evaluated and adapted according to the characteristics of LEP students (including poverty, cultural traditions, ESL level and age). However, in their eagerness to be up-to-date, school personnel have not analyzed the assumptions behind these innovations.

After the Lau vs. Nichols Decision

The changes introduced through *Lau vs. Nichols* and subsequent federal statutes resulted in minimal compliance with the law. Following a letter of finding of non-compliance with federal laws, school districts requested and were provided with guidelines to remedy their failure to act in accordance with the law. Unfortunately, the Supreme Court in *Lau vs. Nichols* did not prescribe a remedy. The justice's decision left it up to school districts to decide the educational response.

The *Lau* decision was unwavering and clear that "school districts must take affirmative action to rectify the students' language deficiency as soon as possible" (*Lau vs. Nichols*, 1974). However, neither the court decision nor the *Lau Remedies*, which followed, prescribed bilingual education. School districts were free to choose bilingual education or English as a second language (ESL). This diminished the commonly held idea that bilingual education was the most appropriate response. Thus, school districts, whether they applied bilingual education or ESL took a deficit posture: there is something wrong with or missing from the child identified as

LEP. The charge to them became "do something as soon as possible and only as long as necessary." In schools across the nation, this became translated into minimal compliance with the law and the guidelines (a few exceptions existed in states having state-mandated bilingual education laws). School districts looked to acting on the guidelines without realizing that these, as well as those of bilingual education prescribed by state law, specify the ***minimum*** action to be undertaken in order to not be out of compliance.

Thus, the *Lau* response became a programmatic response, not a restructuring or an equity response. Consequently, emphasis was placed on implementation concerns: how to identify students, what program to choose, which books to select, where to find certified teachers, how to provide training to teachers. Because neither the *Lau* decision nor the guidelines addressed the issue of grading, grade retention, learning and communication styles, or access to special programs (e.g., gifted and talented, calculus, meeting graduation requirements in an academic track) when addressing the instructional needs of LEP students, educators similarly ignored these issues.

For these reasons, it is imperative that in the next generation of desegregation educators finally address the equity issues needed to meet the educational needs of LEP students. Bilingual education is a necessary, but by itself an insufficient, response. While it is the best approach to meet the *instructional* needs (a program), educators need to keep the ultimate goals we want for students, which is equity in educational outcomes.

Policy Recommendation for the Next Generation

In addition to the usual programmatic mandates for serving LEP students (identify, place in programs, teach ESL, teach content in home language, provide ESL in the content areas, assess, exit), the following are some additional mandates that my analysis of recent research indicates should be added to new policy regulations for serving LEP students.

- Re-examine findings from the effective teaching research. Extract principles that are applicable to education of LEP students.
- Extract factors in the research on effective schools and classrooms and apply to education of LEP students, e.g., campus policy prohibiting racial and ethnic slurs (orderly environment, high expectations).
- Require keeping data on indicators that affect outcomes, such as grade retention (leads to over-agedness), diciplinary measures, e.g., suspensions (miss out on content coverage), public rewards (high level of students rewarded).
- Monitor and uphold prohibitions against tracking, ability grouping, assignment to special education and exclusion from gifted and talented programs.
- Make special efforts to enroll LEP students (and exited LEP students) in advanced math and science courses and gifted and talented programs. Document procedures for school districts to follow.
- Use native language or ESL techniques to teach LEP students enrolled in advanced courses.
- Emphasize the need for sending information home in a language that parents can

understand.

- Involve parents of LEP students in Site Based Decision Making (SBDM) committees.
- Monitor innovative teaching techniques to determine if they accomplish the desired aim: participate actively, cover and learn the content, experience high rates of success.
- Ensure successful transition into English. Train the receiving teachers. Follow up for two years. Make provisions for re-enrollment of exited students in special services if needed.
- Assign a central office administrator to implement appropriate accountability procedures to assure student progress and success.

The school-age language-minority population grew from 8.1 million to 9.9 million during the 1980s (Waggoner, 1994). Moreover, projections for growth in the Hispanic population predict that this group will double in 30 years and triple in 60 years. The time for improving public education for an increasing segment of the school-age population is now. At stake are a basic education and a life-chance for self-sufficiency for several million children and youths who can and should learn English and achieve in school.

Resources

Beebe, C. and J. Evans. "Clarifying the Federal Role in Education," In R. Miller (Ed.), *Federal Role in Education* (Washington, D.C.: Institute for Educational Leadership, 1981), pp. 39-48.

Brown vs. Board of Education (1954), 347 U.S. 483.

Council of Chief State School Officers (CCSSO). *School Success for Limited English Proficient Students*, (Washington, D.C.: CCSSO, 1990).

García H. and R. Donato. Paper presented at the Eighteenth annual Texas Association for bilingual Education Conference (Lubbock, Texas, November, 1990).

Lau vs. Nichols: The Supreme Court Opinion (1974), 414 U.S. 563-572.

Network of Regional Desegregation Assistance Center. *Resegregation of Public Schools: The Third Generation* (Portland: Network of Regional Desegregation Assistance Centers, 1989).

Oakes, J. *Keeping Track: How Schools Structure Inequality* (New Haven: Yale University Press, 1985).

Ortiz, A.A. "Characteristics of Limited-English-Proficient Hispanic Students Served in Programs for the Learning Disabled. Implications for Policy and Practice" (Part II), *Bilingual Special Education Newsletter* (Austin, TX: The University of Texas at Austin, 1986), pag 58.

Squires, D.A., W.G. Huitt and J.K. Segars *Effective Schools and Classrooms: A Research-Based Perspective* (Washington, D.C.: Association for Supervision and Curriculum Development, 1984).

Sosa, A.S. *Through and Fair: Creating Routes to Success for Mexican American Students* (Charleston, WV: ERIC Clearinghouse on Rural Education and Small Schools, 1993).

U.S. Congress. *Civil Rights Acts of 1964*, Title VI. 42 U.S.C. 2000d (1970).

U.S. Department of Health, Education and Welfare (DHEW), Office for Civil Rights. *Memorandum to school districts with more than five percent national origin group children*, From: Stanley M. Pottinger, OCR Director. Subject: Identification of Services on the Bases of National Origin (May 25, 1970).

U.S. Department of Health, Education and Welfare (DHEW), *HEW Memorandum: Lau Guidelines* (Summer 1975).

Waggoner, D. "Language-Minority School-age Population Now Totals 9.9 Million" *NABE News* (September 15, 1995), 18(1).